

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 739 OF 1999

1. Devidas s/o. Shankar Thakur
deceased through L.Rs
- 1-A) Dattatraya s/o. Devidas Thakur
Age- Major, Occ- Service & Agri.,
- 1-B) Vimal w/o. Devidas Thakur
Age- Major, Occ- Household.
- 1-C) Saku d/o. Devidas Thakur
Age- 16 years, Occ-
U/G. of Vimal w/o. Devidas Thakur
- 1-D) Balika d/o. Devidas Thakur
Age-10, U/G. of Petitioner No. 1-B.,
All r/o. Halli, Taluka- Udgir,
Dist. Latur.

...PETITIONERS

Versus

- 1 Balasaheb s/o. Raosaheb Kale
Age- Major, Occ- Agril.,
2. Baburao s/o Earbas Shetkar
Died through L.Rs.
- 2A. Smt. Gangabai w/o Baburao Shetkar,
Age- 74 years, Occu- Household.
- 2B. Shivaji s/o Baburao Shetkar
Age- 40 years, Occu- Agril.
- 2C. Ganpat s/o. Baburao Shetkar
Age- 55 years, Occ- Agril.
- 2D. Ashok s/o. Baburao Shetkar
Age- 39 years, Occu- Agril.

- 2E. Earbas s/o Baburao Shetkar
Age- 45 years, Occu- Agril.
- 2F. Kashinath s/o Baburao Shetkar
Age- 38 years, Occ- Agril.
All R/o. Hali, Taluka- Udgir.
District Latur.
- 3. Bhagwan s/o Nagu Shinde
Died through L.Rs.
- 3-A. Jijabai wd/o Bhagwan Shinde
Age- 50 years.
- 3-B. Kashibai wd/o Bhagwan Shinde
Age- 48 years.
- 3-C. Yashwant s/o Bhagwan Shinde
Age- 30 years.
- 3-D. Mohan s/o. Bhagwan Shinde
Age- 28 years.
- 3-E. Deelip s/o Bhagwan Shinde
Age- 26 years.
- 3-F. Kishan s/o Bhagwan Shinde
Age- 24 years.
- 3-G. Vikram s/o Bhagwan Shinde
Age- 22 years.
- 3-I. Anil s/o. Bhagwan Shinde
Age- Major.
- 3-J. Renua d/o. Bhagwan Shinde
Age- 19 years.
All by Occu. Agil., R/o. Hali,
Taluka Udgir, District- Latur.
- 4. Maharashtra Revenue Tribunal,
Aurangabad.

5. The State of Maharashtra
Through Deputy Collector
Latur, Dist. Latur.

..RESPONDENTS

WITH
WRIT PETITION NO. 1041 OF 1999

1. Baburao s/o Earbas Shetkar
Died through L.Rs.
1. Smt. Gangabai w/o Baburao Shetkar,
Age- 74 years, Occu- Household.
- 1B. Shivaji s/o Baburao Shetkar
Age- 40 years, Occu- Agril.
- 1C. Ganpat s/o. Baburao Shetkar
Age- 55 years, Occ- Agril.
- 1D. Ashok s/o. Baburao Shetkar
Age- 39 years, Occu- Agril.
- 1E. Earbas s/o Baburao Shetkar
Age- 45 years, Occu- Agril.
- 1F. Kashinath s/o Baburao Shetkar
Age- 38 years, Occ- Agril.
All R/o. Hali, Taluka- Udgir.
District Latur.
3. Bhagwan s/o Nagu Shinde
Died through L.Rs.
- 3-A. Jijabai wd/o Bhagwan Shinde
Age- 50 years.
- 3-B. Kashibai wd/o Bhagwan Shinde
Age- 48 years.
- 3-C. Yashwant s/o Bhagwan Shinde
Age- 30 years.
- 3-D. Mohan s/o. Bhagwan Shinde

Age- 28 years.

3-E. Deelip s/o Bhagwan Shinde
Age- 26 years.

3-F. Kishan s/o Bhagwan Shinde
Age- 24 years.

3-G. Vikram s/o Bhagwan Shinde
Age- 22 years.

3-I. Anil s/o. Bhagwan Shinde
Age- Major.

3-J. Renua d/o. Bhagwan Shinde
Age- 19 years.
All by Occu. Agil., R/o. Hali,
Taluka Udgir, District- Latur.

...PETITIONER

Versus

1. Balasaheb Raosaheb Kale
Age- 35 years, Occ- Agril.,
R/o. Halli, Tq. & Dist. Latur.

2. Devidas s/o. Shankar Thakur
deceased through L.Rs

2-1) Dattatraya s/o. Devidas Thakur
Age- Major, Occ- Service & Agri.,

2-2) Vimal w/o. Devidas Thakur
Age- Major, Occ- Household.

2-3) Saku d/o. Devidas Thakur
Age- 16 years, Occ-
U/G. of Vimal w/o. Devidas Thakur (Resp. No. 2-2)

2-4) Balika d/o. Devidas Thakur
Age-10, U/g. ship of Vimal w/o.
Devidas Thakur (Resp. No. 2-2)
All r/o. Halli, Taluka- Udgir,
Dist. Latur.

3. The Member,
Maharashtra Revenue Tribunal,
Aurangabad. ...RESPONDENTS

.....

Mr. N.P. Patil Jamalpurkar, Advocate for the petitioner.

Mr. S.N. Kendre, AGP for respondent - State

Mr. S.V. Natu h/f. Mr. A.V. Indrale Patil, Advocate for Respondent
No. 1.

Mr. Umakant Patil, Advocate for Respondent No. 2.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 2nd AUGUST, 2022

PRONOUNCED ON: 10th OCTOBER, 2022

JUDGMENT:

1. Since, similar question of law and fact is involved in the present petitions, they were heard together and are being decided by this common judgment.

2. Both these petitions challenge the order passed by the Deputy Collector (L.R.), Latur in File No. 85/TNC/0/3 and order passed by Maharashtra Revenue Tribunal, Aurangabad in File No. 36/A/93/L.

3. For the sake of convenience facts of Writ Petition No. 739 of 1999 are taken into consideration.

4. Facts can be summarized as under:

Respondent No. 1 filed application under section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short 'Act of 1950') before Deputy Collector (Land Reforms) on 23.12.1981, for restoration of possession of land Survey No. 131 and 171 situated at Halli, Taluka- Udgir, District- Latur (suit lands) for eviction of the petitioners claiming that they are illegally in possession of the suit land. It was his contention that his father Raosaheb Kale was personally cultivating the suit lands. The lands were inam lands and on abolition of inams, suit lands were regranted to his father and he was declared as protected owner under section 6(1) of the Hyderabad Inam Abolition and Cash Grants Act, 1954 (for short 'Act of 1954'). Accordingly, his father's name was recorded in Appendix-A.

5. In the year 1964 his father expired, leaving behind him, a widow and respondent No 1, who was minor at that point of time. After the death of his father, respondent No. 1 was declared owner of the suit land under section 6(1) of the Act of 1954. Since he was minor, the petitioners took undue advantage of the said fact and illegally and forcibly obtained possession of the suit lands. At no point of time his father ever alienated or gave suit lands on lease or in possession of the petitioners.

6. The petitioner opposed the application. The Deputy Collector by order dated 29.06.1984 rejected the application filed by respondent No. 1. Said rejection order was set aside by the Maharashtra Land Revenue Tribunal (for short 'Tribunal') and matter was remanded back.

7. After remand, after hearing the parties, Deputy Collector allowed the application filed by respondent No. 1 and directed eviction of the petitioners and others, whosoever is in possession of the suit lands, and respondent No. 1 was directed to be put in possession.

8. The appeal filed by the petitioners challenging the said order before the Tribunal is dismissed. Hence, present petitions.

9. Heard the learned advocate for the petitioners, learned advocate for respondent No. 1, learned advocate for respondent No. 2 and the learned Assistant Government Pleader.

10. The learned advocate for the petitioners assailed the impugned orders contending that the declaration of the Tahsildar

that father of respondent No. 1 was tenant was in contravention of Section 2(a) of Act of 1954. The Tahsildar has failed to make detail inquiry as contemplated under section 2(a). As per Rule 3 of Hyderabad Inams and Cash Grants Abolition Rules, 1960 (for short 'Rules of 1960') occupancy price has to be paid within seven years of the appointed date. He submits that father of respondent No. 1 died in the year 1964 and during his life time he has never filed any proceeding claiming the suit lands. Though, Tahsildar declared father of respondent No. 1 as tenant on 07.01.1960 i.e. on appointed date, tenancy certificate is issued on 30.06.1980, which is challenged in the present petitions. Rule 5 of Rules of 1960 is not followed. By referring to the definition of Collector, inam, inamdar and permanent tenant given in Section 2, he submits that, section 2(j) does not include any permanent tenant. He submits that after 20 years of the appointed date, respondent No. 1 has submitted application to the Tahsildar. Application under section 98 of the Act of 1950 is not filed within reasonable period and it is filed after 20 years, therefore, in view of ratio in *Santoshkumar Shivgonda Patil and Ors. Vs Shri Balasaheb Tukaram Shevale and Ors*, (2009) 9 SCC 352, application itself was not maintainable and therefore, order passed by the Deputy Collector is without jurisdiction.

11. Further submission is that procedure under section 5 and 6 of Act of 1954, is not followed, therefore, right of the tenant is extinguished. The power under section 5 and 6 is with the Collector and not with the Tahsildar. He submits that in the old revenue record of 1961-62, somebody else's name is recorded and father of respondent No. 1 was not in possession of the suit lands. By relying on the decision in Regular Civil Suit No. 361/1985, he submits that it was the suit for possession of the suit property, which was decreed in favour of the petitioners and pursuant to it possession is handed over to the petitioners. The judgment and decree of the Trial Court is confirmed by the District Court and it has become final. By placing reliance on the possession receipt, he submits that, the petitioner in possession of the suit land since last more than 28 years. He therefore, by relying on Rama s/o Dashrath & Others Vs. Nuruddin s/o Kazi Nasiruddin & another, 1988 (3) Bom.C.R. 513, Abdul Wahed s/o Sk. Farid Vs. State of Maharashtra & Another, 1986 (3) Bom.C.R. 288, submits that impugned orders cannot be sustained and same are liable to be quashed and set aside.

12. The learned advocate for respondent No. 1 on the other hand submits that occupancy rights granted in favour of

respondent No. 1, in the year 1961, were never challenged by the petitioners. After attaining majority, respondent No. 1 has applied for issuance of occupancy certificate which was granted on 03.06.1980. He submits that as per section 3(1) of the Act of 1954, all inams are abolished and the lands vested in the State, and therefore, after 01.07.1960, inam of the suit lands was abolished. Unless, the former inamdar claim occupancy rights or disputes the nature of inam, he has no right to litigate against grant of occupancy rights. The petitioners (former inamdars) never claimed occupancy rights of the suit lands. He submits that admittedly, the suit lands are madat mash lands. Therefore, only question is to be decided under section 2(a)(vi) was whether father of respondent No. 1 was tenant on appointed date, which was decided in favour of father of respondent No. 1 and it was never challenged by the petitioners. Tahsildar is the competent authority for issuance of occupancy certificate as per section 2(a)(1)(vi) of the Act of 1954, which is held by this Court in Rama Dashrath (supra). The petitioners have failed to challenge occupancy rights granted in favour of Raosaheb in 1961 or occupancy certificate granted in favour of respondent No. 1 in 1980. Both these were required to be challenged separately. According to him, there is no provision for giving

opportunity of hearing to inamdar, at the time of issuance of occupancy certificate. Since occupancy rights were already granted, issuance of occupancy certificate is not a decision or order and it is only a formality.

13. According to him, Section 33 of the Act of 1954, saves application of the provisions of Act of 1950, to any inam or the mutual rights and obligations of an inamdar and his tenants, so far as it is not inconsistent with the express provisions of Act of 1954. As Act of 1954 does not contain any provision for summary eviction of illegal occupant, application under section 98 of the Act of 1950, was filed, which is rightly held to be maintainable by both the authorities.

14. Further submission is that suit filed by inamdar for recovery of possession was not maintainable and jurisdiction of the Civil Court to decide claim in respect of status of inamdar or occupancy rights is impliedly barred under the Act of 1954 and specifically barred under Act of 1950. In view of proceeding filed under section 98, for summary eviction of illegal occupant in the year 1981 before the competent authority, suit filed thereafter is not maintainable and the decision in that suit is a nullity for want of jurisdiction.

15. He further submits that occupancy price was not paid within prescribed time under the Rules, was neither pleaded nor argued before both the authorities below. According to him, this amounts to admission for grant of occupancy rights to father of respondent No. 1. He further submits that Respondent No. 1 was dispossessed when he was minor and after becoming major he applied for occupancy certificate in 1980, after getting same, immediately applied under section 98 for summary eviction, therefore, said application cannot be said to be belatedly filed. He therefore, submits that there is no substance in the petitions and petitions are liable to be dismissed. In support of his submissions, he relied on Govind Anantrao Upadhya & Others Vs. State of Maharashtra & Others, 2001 (3) Bom.C.R. 587, Dattatraya Sadashiv Dhond Vs. Ganpati Ranghu Gaoli, 1965 DGLS (Bom.) 18 and Laxman Shankar Bandgar (died) Through L.Rs & Ors. Vs. Venkat Rama Bandgar (died) Through L.Rs and Ors., 2016 (7) Bom.C.R. 288.

16. The learned advocate for respondent No. 2 (Petitioner in Writ Petition No. 1041 of 1999) adopted the arguments of learned advocate for the petitioners. He submits that on 19.12.1965, respondent No. 2 purchased portion of suit

land and he is still in possession of the same. He claims that since 1960, tenant was not in possession of the suit land, therefore, he was not in possession on the appointed date. He submits that as per section 53 of the Transfer of Property Act, 1882, the petitioners are holding possession illegally and therefore, summary eviction proceeding under section 98 of the Act of 1950, should not have been made applicable to the petitioners. According to him, Deputy Collector has erred in allowing the application under section 98 of the Act of 1950 and the Tribunal has erred in confirming the said order.

17. Heard Shri. N.P. Patil Jamalpurkar for the petitioners, Mr. S.V. Natu, Advocate for respondent No. 1, Shri. Umakant Patil, Advocate for respondent No. 2 and Shri. S.N. Kendre, Assistant Government Pleader for State at length. Perused the record.

18. At the outset, ground of limitation raised by the petitioners by relying on Santoshkumar Shivgonda Patil (supra) is liable to be rejected. In Laxman Bandgar (supra), the learned Single of this Court by referring to Mesaji Laxman Ubare Vs. Ramchandra (Dr.) Laxminarayan Toshniwal, 2011(4) Mh.L.J. 668,

Division Bench judgment of this Court in **Ghanshyamprasad Natwarlal Bhatt Vs. Gendalsingh Vakhatsing**, S.C. App. No. 764/1995 and **Limbaji Shankar Munde (deceased through L.Rs.) Vs. Bhaurao Baliram Munde** (deceased through L.Rs.), 2010 (3) Mh.L.J. 138 has held:

"40. As such, I am in respectful agreement with the above observations from the judgment of this Court in the case of *Mesaji Laxman Ubare (supra)*. In my view when Section 98 does not prescribe any limitation and looking to the scheme of the Act of 1950, the intent and object of the legislature is quite clear. When an agriculturist has been wrongfully dispossessed and a person is in unauthorised occupation or wrongful possession of the said land, law has been empowered to summarily evict such a person who is in wrongful possession. I find that the legislature does not intend to fetter the scope and ambit of proceedings under Section 98 with any limitation. The nonprescription of any limitation in Section 98 is, therefore, to be construed to mean a specific object which the legislature intends to achieve. In these circumstances, I respectfully disagree with the view expressed in the case of *Radhu Gokul Gawli died through L.Rs. & ors. (supra)* to the extent of 'reasonable time'.

41. -----

42. In view of the above observations of the Division Bench of this Court in *Ghanshyamprasad Natwarlal*

Bhatt (supra), Limbaji Shankar Munde (supra) and Mesaji s/o Laxman Ubare, I find it appropriate to follow the view taken in the aforesaid three judgments and, therefore, conclude that Section 98 of the Act of 1950, cannot be fettered with limitation. As such, I conclude that the application preferred by the applicants under Section 98 of the Act of 1950 was maintainable and has been correctly so held by the Deputy Collector, Land Reforms and the Maharashtra Revenue Tribunal, Aurangabad.

43. So far as the issue as to how did the petitioners come into possession of the land is concerned, there is no explanation forthcoming from the petitioners. The petitioners are non committal on the manner in which they obtained possession of the suit land and as regards the justification of being in possession. Land revenue receipts have been produced in the record and proceedings of the matter. Nevertheless, the 7/12 extract that was placed on record clearly evidences that the name of Venkat Rama Bandgar (now deceased) was recorded as a tenant. Several 7/12 extracts from 1961 till 1973-74 stand in the name of Venkat and from the year 1975-76 onwards, they stand in the name of the deceased Laxman Shankar.

44. In this backdrop, it is clear that the petitioners cannot explain, much less justify being in possession of the suit land. I am, therefore, in agreement with the view taken

by both the lower authorities that the petitioners have unlawfully been in the possession of the suit land. Nevertheless, Section 98 of the Act of 1950 which is akin to Section 84 of the Bombay Act of 1950, vests no legal right in the petitioners to remain in possession of the suit land."

19. In the case in hand, the petitioners have failed to justify as to how they came in possession of the suit lands. The contention of the petitioners that they being original owner cannot be said to be in unauthorized possession in the facts of the present case is unacceptable.

20. Admittedly, the occupancy rights were granted in favour of Raosaheb, father of respondent No. 1 in the year 1961 and his name was recorded in the revenue record. This can be termed as sufficient notice to the petitioners and the petitioners should have challenged the same. At no point of time, the petitioners have challenged the occupancy rights. It also cannot be disputed that after attaining majority, respondent No. 1 applied for occupancy rights which was granted to him in the year 1980. The argument of respondent No. 1 that there is no provision for giving opportunity of hearing to the inamdar or any other person in possession at the time of issuance of occupancy

certificate, as occupancy rights are already granted and grant of occupancy certificate is cannot be termed as decision/order, is liable to be accepted. In the present case, since occupancy rights were granted in the year 1961, there was no reason to give opportunity of hearing to the petitioners at the time of issuing occupancy certificate in the year 1980. Fact remains that the petitioners have never challenged the occupancy certificate issued in favour of respondent No. 1, and the same cannot be challenged in a proceeding filed by respondent No. 1 under section 98 of Act of 1950.

21. Record indicates that name of father of respondent No. 1 appears in Appendix-A of village Halli, wherein Raosaheb Kale's possession to Survey No. 131 and 171 is recorded. His name is mutated as original owner by Mutation Entry No. 5, which is sanctioned on 15.03.1962. After his death, mother of respondent No. 1 has mutated name of respondent No. 1 (as minor) by Mutation Entry No. 36, which was sanctioned in the year 1967. On attaining majority, respondent No. 1 credited amount of occupancy price fixed for the suit land, and the Tahsildar, Udgir, issued occupancy certificate in the name of respondent No. 1 on 03.06.1980. Therefore, respondent No. 1

legally became registered owner of the suit lands.

22. In support of his application under section 98 of Act of 1950, respondent No. 1 has examined two witnesses, who supported his case that suit lands were in possession of father of respondent No. 1 till his death. They have further stated that they did not know as to how the petitioners came in possession of suit lands and in what capacity. At the time of death of father, respondent No. 1 was seven years old.

23. Vimalbai, widow of petitioner No. 1 herein, stated that her husband did not sale any land to anybody during his life time. She has further stated that Gopinath, brother of her husband was restricted owner of the suit lands and father of respondent No. 1 was subordinate to him. She has further admitted that father of respondent No. 1 was cultivating land of Gopinath. In cross examination she stated that she did not know as to how her husband came in possession of the suit land.

It is obvious that petitioners by taking undue advantage of minority of respondent No. 1 have sold the suit lands, after the death of father of respondent No.1, by way of agreement on simple paper.

24. The Deputy Collector has observed in the impugned order that only the name of Gopinath Thakur appeared in Appendix-A. Name of Devidas Thakur does not appear anywhere in the revenue record. It is therefore, not known as to why respondent No. 2 entered into agreement with Devidas Thakur. He has recorded a finding that it gives room to assume that for the sake of entering in possession and creating record, both Gopinath Thakur and Devidas Thakur have executed agreement of sale with respondent No. 2. In view of statement made by Vimalbai, that her husband during his life time has not sold any land to anybody, he has held that agreement of sale produced by respondent No. 2 is not genuine and reliable. He has further held that by virtue of the Act of 1954 and tenancy laws, owner or restricted owner is not entitled to sale inam land without permission of the Collector. Such land even cannot be mortgaged or partitioned without prior permission of the Collector. Therefore, transaction though has taken place, is of no value in the eyes of law. He therefore, concluded that possession of respondents No. 2 and 3 is illegal and they are liable to be evicted summarily from the suit lands under section 98 of the Act of 1950.

The Deputy Collector has therefore rightly held that,

it can be presumed that Petitioner No. 1 was also not legally in possession of the suit land and therefore possession of petitioner no. 1 and his heirs cannot be said to be legal possession.

25. In the light of observations of the learned Single of this Court in para 43 of Laxman Bandgar (supra), Deputy Collector was justified in allowing the application filed by respondent No. 1, and directing restoration of possession of suit lands to him.

26. The Tribunal has observed in its judgment that from the record it is evident that in the year 1955-56, father of respondent No. 1 was in possession of the lands and under section 3 of the Act of 1954, lands are vested in the Government and under section 6(1), Tahsildar regranted suit lands to deceased Raosaheb, who was tenant at the time of vesting the lands. After fixation of occupancy price and on deposit of same, limited ownership certificate is granted in favour of respondent No. 1 on 03.06.1980.

27. It is also matter of record that after following procedure under section 2(a) of the Act of 1954, Tahsildar has

rightly decided the nature of inam and occupancy of the inam lands on the date of vesting. Proper inquiry was conducted by the Tahsildar and it was found that Raosaheb, father of respondent No. 1, is in occupancy and possession of the lands and therefore, occupancy rights were granted in his favour. The Tribunal has held that once occupancy rights have been granted in respect of said lands in favour of Raosaheb, it has become final and not challenged either by inamdar or by the petitioners, till date, submission of the respondents that Tahsildar had no jurisdiction to decide grant of occupancy in favour of Raosaheb need not to be considered. The Tribunal held that aggrieved person should have filed appeal challenging the order of Tahsildar granting occupancy rights to respondent No. 1, in the competent Court.

The Tribunal was right in holding that it had no jurisdiction to decide whether father of respondent No. 1 was granted occupancy rights and limited ownership according to law or not and only question to be decided by the Tribunal is whether respondent No. 1 is entitled to claim possession of the suit lands. The Tribunal further held that the Deputy Collector while passing the order under challenge has considered the revenue record and the order passed by the Tahsildar. Deputy Collector being

fact finding authority has rightly observed and held that possession of respondents No. 2 and 3 is unauthorized and wrongful, and therefore, respondent No. 1 is entitled to recover possession of suit lands from them. The findings and conclusions of the Tribunal are required to be sustained.

28. In Rama Dashrath (supra), Division Bench of this Court has held that '*questions about occupancy rights are to be determined by State Government or by officer authorised by it. Tahisildar has no power to decide the same and if some decision has been rendered by Tahsildar, there will be no question of constructive res judicata*'.

In that case, there was dispute regarding nature and character of inam of the suit land. One party contended that it was unconditional inam and other party contended that it was service inam and therefore, it was excluded explicitly from the operation of the Act of 1954. In these facts, the Division Bench held that "*points enumerated in sub-section (1) of section 2-A of the Act arise, they shall be decided either by the State Government or by the Officer authorised by it before the case should proceed further. It is an admitted position that for the purposes of section 2-A(1)(i), (ii), (iii), (iv) and (v) the officer*

authorised by the State Government is the Deputy Collector or the Assistant Collector, whereas, for the purposes of remaining points the officer authorised by the Government is the Tahsildar. The latter covers the question as to whether any person is a kabiz-e-kadim, permanent tenant or tenant."

29. In the case in hand, there is no dispute that the suit lands were inam lands and Tahsildar has decided the tenancy rights of father of respondent No. 1. Therefore, since decision in the aforesaid judgment is rendered in different facts, it is not applicable to the facts of present case.

30. The argument of the petitioners that Tahsildar has failed to make detail inquiry as contemplated under section 2(a), is not acceptable in view of observations of Division Bench in Govind Upadhaya (supra) as under:

"22. The third ground of challenge is that no procedure is prescribed under the Inam Abolition Act for holding inquiry regarding on whom the occupancy rights should be conferred and the contention of the learned Counsel for the petitioners is that in such circumstances, if any person claims to be a

tenant on such land, then the provisions of the Tenancy Act would be applicable and inquiry should be held under the provisions of the Tenancy Act.

23. However, it is to be noted that, as per the provisions of section 3(1) of the Inam Abolition Act, when the provisions of sub-section (2) of section 1, or, of section 2-A of the Inam Abolition Act are made applicable to any land, then all inam lands, to which the said provisions are made applicable, are deemed to have vested in the State Government. In the present case, even if for the sake of arguments it is considered that the land, Block No. 371, was community service inam, it falls under Clause (iii) of section 2-A(1) of the Inam Abolition Act and, therefore, the Inam stood abolished and land vested in the State Government.

24. Section 102-A of the Tenancy Act provides for certain lands exempted from the operation of the Act; and Clause (a) provides for the lands leased or held by the Government, a local authority, a co-operative society or a University, established by law in the State. When inams stood abolished and lands vested in the

State Government, it became the lands held by the State Government as described in section 102-A(a) of the Tenancy Act and the provisions of the Tenancy Act are, therefore, not applicable to such lands. Therefore, the inquiry as to whether a person is a tenant or not on such a land cannot and need not be held as per the provisions of the Tenancy Act. The first limb of the contention of the learned Counsel for the petitioners that the inquiry ought to have been held under the Tenancy Act to find out whether respondents Nos. 5 and 6 were tenants on the land as on 1-7-1960 cannot, therefore, be accepted."

31. In Abdul Wahid (supra), by considering the provisions of Rule 4, 5 of the Act of 1954, the Division Bench of this Court has held that '*tenant in occupancy of land must deposit occupancy price under the proviso to Clause (b) of sub-section (2) of section 5 from the appointed date. The manner of payment of occupancy price is given under Rule 5*'. In the facts of that case, the Division Bench held that there was violation of said Rules.

In the facts of the present case, occupancy rights

granted in favour of father of respondent No. 1 in the year 1961, were not challenged at any point of time, so also, occupancy certificate issued in favour of Respondent No. 1 in the year 1980, is also not challenged by the petitioners. Therefore, this decision will not assist the petitioners.

32. For the aforesaid reasons, there is no substance in both the petitions filed by the petitioners. No case is made out by the petitioners to warrant exercise of extraordinary writ jurisdiction. The writ petitions being devoid of merit are dismissed.

Rule discharged. No costs.

33. At this stage, the learned advocate for the petitioners seeks continuation of status quo granted by this Court vide order dated 12.03.1999. Interim order passed by this Court shall continue to operate for a period of six weeks from today.

[NITIN B. SURYAWANSHI, J.]